

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
Petition for Temporary Waiver or Temporary Stay)	
by Texas RSA 15B2 Limited Partnership d/b/a)	
Five Star Wireless)	

ORDER

Adopted: June 18, 2007

Released: June 18, 2007

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless (Five Star),¹ a Tier III wireless service provider.² Five Star seeks an extension of time from its current March 15, 2007 deadline, until December 31, 2007, to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's rules that carriers employing a handset-based E911 Phase II location technology were to have achieved 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.³

2. Pursuant to the ENHANCE 911 Act,⁴ and based on the record before us, we find that relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant Five Star's request for an extension, until December 31, 2007, to achieve 95% penetration among its subscribers of location-capable handsets.

¹ Petition for Temporary Waiver or Temporary Stay of Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless, CC Docket No. 94-102 (filed Mar. 15, 2007) (Petition).

² Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

³ 47 C.F.R. § 20.18(g)(1)(v). The Commission previously granted Five Star waiver relief from the 95% handset penetration deadline until March 15, 2007. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 2883, 2890 ¶ 21 (2006) (*Five Star Waiver Order*).

⁴ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

II. BACKGROUND

A. Phase II Requirements

3. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁵ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁶ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).⁷ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.⁸ However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.⁹

4. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.¹⁰ After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹¹

B. Waiver Standards

5. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.¹² The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."¹³ To the

⁵ See 47 C.F.R. § 20.18(e).

⁶ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3.

⁷ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3.

⁸ See 47 C.F.R. §§ 20.18(f), (g)(2).

⁹ See 47 C.F.R. § 20.18(j)(1).

¹⁰ See 47 C.F.R. § 20.18(g)(1).

¹¹ See 47 C.F.R. § 20.18(g)(1)(v).

¹² *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; see also *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that "wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (stating that "under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and . . . relief may therefore be warranted").

¹³ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000).

extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.¹⁴ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁵ A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available federal, state, or local funding sources.¹⁶ The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.¹⁷

6. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.¹⁸ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

7. Finally, we note that distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).¹⁹ The ENHANCE 911 Act, *inter alia*, directed the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and to grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²⁰

¹⁴ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁵ See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

¹⁶ See *id.*

¹⁷ *Id.* at 20997 ¶ 28.

¹⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-37 ¶¶ 17, 19, 37, 57, 70.

¹⁹ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²⁰ *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* § 107(b), 118 Stat. 3986, 3991.

C. Five Star's Request for Further Waiver

8. Five Star is a Tier III carrier providing cellular service in rural areas of Texas over CDMA, TDMA, and analog networks.²¹ Five Star has completed overbuilding its TDMA network with CDMA and is in the process of phasing out its TDMA facilities; all of its current activations are ALI-capable CDMA or dual mode CDMA/analog handsets.²² Five Star has not received a request for Phase II service from any of the five PSAPs in its service area.²³ In December 2005, Five Star requested that the Commission allow it an additional 24 months, until December 31, 2007, to achieve a 95% location-capable handset penetration rate.²⁴ The Commission granted Five Star's request in part, subject to conditions and reporting requirements, and established a compliance deadline of March 15, 2007.²⁵

9. In the instant Petition, Five Star describes various efforts toward achieving compliance with the handset penetration deadline, including bill inserts to customers, advertisements in newspapers, radio broadcasts, and cable television, and hiring "an additional person whose sole job is to call each and every customer (repeatedly, if needed) with a non-ALI-capable handset to persuade them to obtain an ALI-capable one."²⁶ Five Star also offered those customers "a new ALI-capable handset free of charge, and no minimum duration service contract will be required."²⁷ The carrier reports that these efforts have been "very successful," with penetration of ALI-capable handsets rising from 30% in December 2005 to 90.1% as of April 30, 2007.²⁸ Nonetheless, Five Star says that the "due to circumstances clearly beyond its control, [it] finds itself unable to meet the requirement that, by March 15, 2007, 95 percent of the handsets on the system be ALI-capable."²⁹

10. In support of its request, Five Star states that "[i]n rural areas, customers tend to hold onto their wireless telephones longer than customers in larger, metropolitan markets – and they particularly like to hold onto the older [higher-power, analog] bag-phones because of their superior range."³⁰ Five Star asserts that, without the requested relief, it "could be required to terminate service to those pre-existing customers who (for whatever reason) have voluntarily elected to retain their non-ALI-capable handsets" and "[t]his would clearly result in the affected 'customers having decreased access to emergency services' because they would be denied access to the E-911 Phase I service already in place in three of the four counties that comprise Five Star Wireless' service area, as well as access to basic 911 service."³¹ Five Star argues that, for these reasons, its request meets the standard for relief under the ENHANCE 911 Act as well as the Commission's E911 waiver standards.³²

²¹ Petition at 2.

²² *Id.* at 3.

²³ *Id.* at 2.

²⁴ Petition for Temporary Waiver or Temporary Stay of Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless, CC Docket No. 94-102 (filed Dec. 14, 2005).

²⁵ *Five Star Waiver Order*, 21 FCC Rcd at 2890 ¶ 21.

²⁶ Petition at 4.

²⁷ *Id.*; *see also* Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless, Fifth Quarterly Report, CC Docket No. 94-102, at 2 (filed Apr. 30, 2007) (Fifth Quarterly Report).

²⁸ Fifth Quarterly Report at 2.

²⁹ Petition at 6.

³⁰ *Id.* at 7.

³¹ *Id.* at 14.

³² *Id.* at 13.

III. DISCUSSION

11. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have ensured that Phase II would be fully implemented as quickly as possible.³³ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.³⁴ Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.³⁵

12. We remain concerned that Five Star's efforts have fallen short in achieving compliance with the 95% benchmark. Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of Five Star's customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of Five Star's service area if those customers were forced to convert from analog bag phones to location-capable handsets. It thus appears likely that strict enforcement of Five Star's current March 15, 2007 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.³⁶ We therefore conclude that relief from the deadline is warranted pursuant to the ENHANCE 911 Act.³⁷

13. Accordingly, we grant Five Star's request for an extension until December 31, 2007 (approximately six months from the date of release of this Order), subject to certain conditions and reporting requirements, so that the Commission can continue to monitor Five Star's progress in meeting the 95% handset penetration benchmark.³⁸ Although we grant the extension requested by Five Star, we emphasize that absent Five Star undertaking all necessary efforts to ensure timely compliance, Five Star should not assume that the Commission would act favorably on any future request for relief based on the same grounds.

14. *Conditions.* As a condition of the relief granted herein, Five Star has an ongoing obligation, until it achieves a 95% handset penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit

³³ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

³⁴ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

³⁵ See *supra* ¶ 7.

³⁶ Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

³⁷ Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Five Star's Petition satisfies the Commission's E911 waiver criteria.

³⁸ We note that the Commission has not received any objections from the public safety community specific to the instant Petition.

their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

15. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require Five Star to file status reports every February 1, May 1, August 1, and November 1, but extend these reporting requirements until March 15, 2009.³⁹ These reports shall include the following information, as previously required: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. To comply with the sixth reporting requirement – status in achieving compliance – Five Star must include a detailed, specific explanation of how it arrived at its estimate of whether it is on track to meet the compliance deadline, including an explanation of any assumptions it has made. It must also include a discussion of how its compliance efforts compare with the efforts of other Tier III carriers – particularly efforts the Commission has cited in previous orders⁴⁰ – and an explanation of why Five Star has chosen the compliance efforts it has chosen.⁴¹ We emphasize that irrespective of the relief we grant in this Order, we fully expect Five Star to achieve compliance as quickly as possible.

IV. CONCLUSION

16. For the foregoing reasons, we conclude that Five Star is entitled to a limited extension of the deadline by which it was required to achieve 95% penetration among its subscribers of location-capable handsets. We therefore grant Five Star's Petition, subject to the conditions and reporting requirements described herein.

V. ORDERING CLAUSES

17. IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing Order IS ADOPTED.

18. IT IS FURTHER ORDERED that the Petition for Temporary Waiver or Temporary Stay by Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is December 31, 2007.

³⁹ See *Five Star Waiver Order*, 21 FCC Rcd at 2890 ¶ 20. We note that we are requiring Five Star to file status reports beyond the date on which we otherwise require it to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring Five Star's progress for an additional year following its revised deadline.

⁴⁰ See, e.g., Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation, WT Docket No. 05-286, *Order*, 22 FCC Rcd 400, 411-12 ¶ 32 (2007) (describing compliance efforts undertaken by Tier III carriers).

⁴¹ For example, to the extent that Five Star offers free location-capable handsets as an inducement to its subscribers to upgrade non-location-capable handsets, it should explain whether these free handsets were offered without requiring a renewed or extended service contract.

19. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek Poarch
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